

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

SMITH & NEPHEW, INC. and  
JOHN O. HAYHURST, M.D.,

Plaintiffs,

v.

ARTHREX, INC.,

Defendant.

No. CV 04-29-MO

OPINION AND ORDER  
Re: Cost Bill

**MOSMAN, J.,**

Plaintiffs seek costs of \$161,609.62 as prevailing parties. This includes Fees of the Clerk (\$150), Fees for Depositions and Transcripts (\$100,144.52), Fees for Witnesses (\$14,785.75), and Fees for Exemplification and Copies (\$46,529.35). Federal Rule of Civil Procedure 54(d)(1) provides for an award of costs to the prevailing party, and is said to create a presumption for such an award. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 944-45 (9<sup>th</sup> Cir. 2003).

Defendant does not dispute that plaintiffs are entitled to recover the \$150 filing fee in this case under 28 U.S.C. § 1920(1). It is GRANTED.

Plaintiffs request for deposition and trial transcript fees includes costs for both hard copy and video, and for deposition transcripts "reasonably necessary at the time of taking" whether or

not ultimately used at trial. *See Harrisburg Coalition Against Ruining the Environment v. Volpe*, 65 F.R.D. 608, 611 (M.D. Pa. 1974). Plaintiffs also seek expedited transcript costs for several depositions and real time trial transcript costs. Defendant's only objections to this portion of the cost bill involve various expedited mailing and postage charges for deposition transcripts and hearing and trial transcripts. I find that plaintiffs have adequately supported the need for both video and hard copies, and the need for all the claimed deposition transcripts. I also find plaintiffs have shown good cause for the expedited and real time transcripts. Plaintiffs have made a sufficient adjustment to this subtotal to take into account defendant's sole objection. Accordingly, deposition and trial transcript fees are GRANTED in the amount of \$100,144.52.

Plaintiffs seek witness fees for court, mileage, actual travel expenses and statutory subsistence. They have adequately supported the request with itemized expenses. Defendant poses no objection. This request for \$14,785.75 is GRANTED.

Plaintiffs seek fees for exemplification and copies. This includes copying documents for opposing counsel, at an average reasonable rate. Plaintiffs have also properly documented the request for copies of trial exhibits. Finally, plaintiffs are entitled to the costs associated with the preparation of demonstrative evidence, including model anchors, poster boards and graphics. Defendant's sole objection is that, as to the graphics/power points and six anchor models, it cannot be sure these were used at trial. In its reply, plaintiffs adequately support the use at trial, or reasonable belief that they would be necessary at trial, of these exhibits. Accordingly, this request for \$46,529.35 is GRANTED.

IT IS HEREBY ORDERED that plaintiffs are entitled to an award of costs, exclusive of attorney fees, in the amount of \$161,609.62.

DATED this 5th day of January, 2009.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Judge